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October 17, 2014

The Honorable Eric H. Holder, Jr.  
United States Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530

Dear Attorney General Holder:

Operation Streamline (OS) has been one of the most successful programs to decrease illegal entries ever initiated along our southwest border. Established in 2005, and subsequently expanded to a number of southwest Border Patrol sectors, OS's original goal was to establish a "zero tolerance" policy in which virtually all adult border crossers not accompanied by their children were criminally prosecuted, most for the misdemeanor crime of a first illegal entry and the felony crimes of subsequent illegal entry and illegal reentry after having been ordered removed.<sup>1</sup> As former Secretary of Homeland Security Janet Napolitano stated, OS "aims to increase the consequences for illegally crossing the border by criminally prosecuting illegal border crossers."<sup>2</sup>

While many of those convicted only serve short prison sentences (including in some instances for time served at the time of conviction), the deterrent effect has been significant. Former Secretary of Homeland Security Michael Chertoff stated that OS "has an unbelievable return . . . . What we see, both statistically and anecdotally, is that when people who cross the border illegally are brought to face the reality that they are committing a crime, even if it is just a misdemeanor, that has a huge impact on their willingness to try again and on the willingness of others to break the law coming across the border."<sup>3</sup> And former Attorney General Michael Mukasey stated that OS and similar programs "appear to have had a significant deterrent effect on illegal immigration in places like Del Rio, Texas and Yuma, Arizona, reducing the number of individuals returning illegally to the United States and discouraging others from coming here illegally in the first place."<sup>4</sup>

<sup>1</sup> See 8 U.S.C. secs. 1325, 1326.

<sup>2</sup> Securing the Border: Progress at the Federal Level, Hearing Before the Senate Comm. on Homeland Security and Governmental Affairs, 112<sup>th</sup> Cong (2011).

<sup>3</sup> U.S. Department of Justice, State of the Border Press Conference, Feb. 22, 2008.

<sup>4</sup> Id.

The Congressional Research Service has reported that the recidivism rate of repatriated illegal entrants (those re-apprehended in the same fiscal year) is dramatically lower under OS – 10.3% in fiscal year 2012 -- than when aliens are simply returned through expedited removal (16.4%) or voluntary return (27.1%).<sup>5</sup> Partially as a result of OS, apprehensions of unlawful aliens fell dramatically from 2005 to 2013 – particularly in the Yuma, Arizona Border Patrol sector where OS had a zero tolerance policy and apprehensions fell from over 138,000 to slightly more than 6,000.<sup>6</sup>

While resource constraints have prevented all first-time border crossers from being prosecuted, many have been – sending a clear message of deterrence. Unfortunately, fewer and fewer first time crossers are being prosecuted program-wide.<sup>7</sup> It is of great concern, therefore, that the Sheriff of Yuma County, Arizona, has recently reported that the U.S. Attorney's Office for the District of Arizona will no longer be prosecuting any first-time border crossers without criminal records. If true, this will send exactly the wrong message to potential illegal entrants around the world and exacerbate our current border crisis. Now is the worst possible time to be undermining OS.

In light of these concerns, please provide me with the following information:

- In each fiscal year beginning in 2005, the Border Patrol sectors in which OS was operating;
- In each fiscal year beginning in 2005 in each federal judicial district containing a Border Patrol sector in which OS was in operation, the number of prosecutions for violation of 8 U.S.C. 1325(a), the number of convictions, and the average sentence length (with each factor broken down by whether the prosecution was for the first commission of a 1325(a) offense or a subsequent commission of an offense);
- In each fiscal year beginning in 2005 in each federal judicial district containing a Border Patrol sector in which OS was in operation, the number of Department of Homeland Security referrals for violation of 8 U.S.C. 1325(a) in which the Department of Justice decided not to initiate a prosecution;
- In each fiscal year beginning in 2005 in each federal judicial district containing a Border Patrol sector in which OS was in operation, the number of prosecutions for violation of 8 U.S.C. 1326(a), the number of convictions, and the average sentence length;
- In each fiscal year beginning in 2005 in each federal judicial district containing a Border Patrol sector in which OS was in operation, the number of Department of Homeland Security referrals for violation of 8 U.S.C. 1326(a) in which the Department of Justice decided not to initiate a prosecution;
- On an ongoing basis, update the information requested above each quarter; and

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<sup>5</sup> See Marc Rosenblum, Border Security: Immigration Enforcement Between Ports of Entry, 2013 Congressional Research Service at 10 (table 1).

<sup>6</sup> Information provided by U.S. Customs and Border Protection.

<sup>7</sup> See Fernanda Santos, Detainees Sentenced in Seconds in "Streamline" Justice on Border, New York Times, Feb. 11, 2014.

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- In each fiscal year beginning in 2009, the changes that have been made, if any, to the prosecution guidelines for OS in each federal judicial district containing a Border Patrol sector in which OS was in operation.

I would appreciate your prompt response to these questions. Please feel free to contact me or have your staff contact George Fishman, Chief Counsel, Subcommittee on Immigration and Border Security (202-225-2127), with any questions.

Sincerely,



Bob Goodlatte  
Chairman

Cc: The Honorable John Conyers, Jr.